REMARKS

Claims 22-39 are pending in the present application. In the Final Office Action mailed November 21, 2006, the Examiner rejected claims 33-37 under 35 U.S.C. §101 because they purport to computer signals, which do not belong to any of the 4 enumerated statutory classes of invention. The Examiner next rejected claims 22, 24, 26-31, 33-34, and 36-39 under 35 U.S.C. §102(e) as being unpatentable over Kennedy et al. (USP 6,963,847) ("Kennedy '847") in view of Kennedy et al. (USP 6,055,519) ("Kennedy '519"). Claims 23, 25, 32, and 35 are rejected under 35 U.S.C. §103(a) as being unpatentable over Kennedy et al. (USP 6,963,847) and Kennedy et al. (USP 6,055,519) as applied to claims 22, 24, 26-31, 33-34, and 36-39 and further in view of Tucker et al. (USP 5,452,218).

In regard to claim 22, the Examiner cited Kennedy '847 and Kennedy '519 as teaching all elements thereof. Both Kennedy '847 and Kennedy '519 are directed to product ordering negotiations and information regarding manufacturing output that is "available to promise" or ATP. *Kennedy '847*, Col. 2, lns. 25-31; *Kennedy '519*, Col. 2, lns. 20-41. In this regard, Kennedy '847 includes a number of ATP servers 14 and Kennedy '519 includes a "negotiation engine" 16 and a scheduler 20 which assist users in coordinating the terms of **potential** orders. Thus, the data and determinations cited by the Examiner in Kennedy '847 and Kennedy'519 do not regard orders that have shipped. In contrast, claim 22 calls for steps such as "automatically determining a shipment quality metric **for all orders that have shipped**." Therefore, from the first instance Kennedy '847 and Kennedy '519 cannot be said to teach or suggest all the subject matter of claim 22.

Regardless of the fact that the art of record does is not directed to monitoring orders that have already shipped, the Examiner cited Kennedy '847 as teaching the shipment quality metric. However, the cited portions of Kennedy '847 merely regard the archiving of data and do not teach or suggest determination of a shipment quality metric for all orders that have shipped, as claimed. *See Kennedy '847*, Col. 33, lns. 51-61 (discussing only that ATP fulfillment archives may have parameters to specify when ATP requests are to be archived or the number of periods of request history to be maintained). Kennedy '519 also does not teach or suggest the claimed shipment quality metric, and the Examiner did not cite the reference as such. Accordingly, the Examiner has not shown that all elements of claim 22 are taught or suggested, and Applicant respectfully requests withdrawal of the rejection of claim 22 and all claims depending therefrom.

In regard to claim 26, the Examiner again applied the same references and cited the same portions thereof. However, claim 26 recites a set of instructions that causes a computer to

"determine a shipment quality metric **for shipped orders**." As discussed above, Kennedy '847 and Kennedy '519 regard order negotiations and do not teach or suggest the determination or display of shipment quality metrics for orders that have already shipped. Therefore, Applicant respectfully requests withdrawal of the rejection of claim 26 and all claims depending therefrom.

Similarly, claim 33 calls for a sequence of instructions which causes a computer to "calculate a total revenue **for the orders in production** for each product category." Since, as set forth above, the Examiner has not shown that Kennedy '847 and/or Kennedy '519 disclose calculations made for orders which have already been made and are in production, all elements of claim 33 are not taught or suggested by the art of record. Accordingly, Applicant respectfully requests withdrawal of the rejection of claim 33 and all claims depending therefrom.

With respect to the rejection of claims 33-37 under § 101, Applicant respectfully disagrees that signals are *per se* non-statutory. MPEP § 2106.02 states that non-functional descriptive material embodied in electromagnetic signals may be non-statutory, but **does not** state that **functional** descriptive material, such as computer instructions embodied in a signals, is non-statutory. Further, the fact that electromagnetic waves occur in nature is inapposite. Such does not establish that electromagnetic signals modulated to impart instructions to a computer in accordance with that called for in the claims exist in nature. To analogize, though iron occurs in nature, an iron machine component is statutory subject matter because the naturally occurring iron has been **processed** in a particular manner. Since claims 33-37 call not simply for signals, but for signals processed or designed to impart instructions to a computer, they are statutory. Nevertheless, should the Examiner maintain disagreement, Applicant invites the Examiner to contact Applicant's undersigned representative to discuss an after-final or Examiner's amendment to recast claims 33-37 in another form.

Therefore, in light of at least the foregoing, Applicant respectfully believes that the present application is in condition for allowance. As a result, Applicant respectfully requests timely issuance of a Notice of Allowance for claims 22-39.

Applicant appreciates the Examiner's consideration of these Remarks and cordially invites the Examiner to call the undersigned, should the Examiner consider any matters unresolved.

Respectfully submitted,

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